



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF YIPES)
ENTERPRISE SERVICES, INC. FOR AUTHORITY TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
NEW JERSEY)

ORDER

DOCKET NO. TE03010038

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated January 10, 2003, Yipes Enterprise Services, Inc. (Petitioner or Yipes) filed a Petition with the New Jersey Board of Public Utilities (Board) requesting authority to provide local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner requests confidential treatment of the financial information in Exhibit E of its Petition.¹

Yipes Enterprise Services, Inc. is a corporation initially organized as PHX Communications, Inc. (PHX) under the laws of the State of Delaware. Later, PHX filed a Certificate of Amendment to change its corporate legal name to Yipes Enterprise Services, Inc. Yipes is a wholly owned subsidiary of Yipes Holdings, Inc. Petitioner's principal offices are located at 114 Sansome Street, 14th Floor, San Francisco, CA 94104.

According to the Petition, Yipes seeks authorization in connection with its proposed acquisition of the assets of Yipes Transmission, Inc. (Old Yipes). The Board granted Old Yipes authority to provide facilities-based competitive local exchange and long distance services in the State of New Jersey in Docket No. TE00060343 dated October 29, 2001. Since April 19, 2002, Old Yipes has been operating under the protection of the Bankruptcy Court for the Northern District of California (San Francisco Division) pursuant to the Chapter 11 of the Bankruptcy Code. Petitioner states that it has agreed to acquire and Old Yipes has agreed to sell its assets to Yipes subject to necessary approval.

Petitioner has submitted copies of its Amended Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, Yipes was formed to provide facilities-based local exchange and

¹ Pursuant to the Open Public Records Act N.J.S.A. 47:1A-1. et seq., and by letter from the Secretary, Petitioner has been notified that the Board shall handle such requests for confidential treatment in accordance with the Board's proposed regulations at N.J.A.C. 14:1-12, et seq.

interexchange telecommunications services to customers throughout the State of New Jersey. Petitioner states that currently it is not authorized to provide telecommunications services but it is in the process of seeking authorization to transfer the assets and, where permitted, the operating certificates and licenses of Old Yipes in the States of California, Colorado, Connecticut, Florida, Georgia, Illinois, Maryland, Massachusetts, New York, Pennsylvania, Texas, Virginia, Washington and the District of Columbia. Petitioner states that it has not been denied authority to provide telecommunications services in any state and has not had its authority to provide telecommunications service revoked in any state. According to the Petition, Yipes has not executed any interconnection agreements with incumbent local exchange carriers.

In its Petition, Yipes seeks authority to provide a full range of facilities-based local exchange and interexchange telecommunications services to customers throughout New Jersey. Petitioner states that initially its operations will be identical to those of Old Yipes. Petitioner will only offer high speed data services in New Jersey, which is not interconnected to the public switched network, and depending on market conditions and customer demand, may expand service offerings in the future. Petitioner states it will file a tariff similar to that filed by Old Yipes. According to the Petition, service will be available on a full-time basis, twenty-four hours a day and seven days a week.

Petitioner requests a waiver of N. J. S. A. 48:3-7.8(a) and N. J. A. C. 14:10-1.16 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts (USOA), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in San Francisco, California. Petitioner also states, upon written notice from the Board, it will provide its books and records at such time and place as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Yipes states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to Yipes, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Petitioner states it is a privately held corporation and maintains that its financial information is confidential and will therefore be submitted under seal.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N. J. S. A. 48:2-21.16(a)(4); N. J. S. A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Yipes's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner has demonstrated it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff and submission of financial statements. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60 and N. J. S. A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board and the required financial statements i.e. balance sheet, income statement, statement of change in cash flow and statement of change in equity, have been provided.

The Board HEREBY ORDERS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New

Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 03/24/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY